

**DEPARTMENT OF DEFENSE (DOD)****Statement of Regulatory Priorities****Background**

The Department of Defense (DoD) is the largest Federal Department, consisting of three Military Departments (Army, Navy, and Air Force), nine Unified Combatant Commands, 16 Defense Agencies, and nine DoD Field Activities. It has over 1,500,000 military personnel and 850,000 civilians assigned as of June 30, 1995, and over 500 military installations and properties in the continental United States, U.S. Territories, and foreign countries. The overall size, composition, and dispersion of the Department of Defense, coupled with a new and innovative regulatory program, presents a challenge to the management of the Defense regulatory program under Executive Order 12866 of September 30, 1993.

Because of its nature, composition, and size, the DoD is impacted by the regulations issued by regulatory agencies such as the Departments of Energy, Health and Human Services, Housing and Urban Development, Labor, and Transportation and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in Executive Order 12866, there must be coordination of proposed regulations among the regulating agencies and the affected Defense Components. Coordinating the proposed regulations in advance throughout an organization as large as the DoD is a straightforward, yet formidable undertaking.

The DoD is not a regulatory agency, but in the course of its operations, it does issue regulations on occasion. These regulations, while small in number compared to those of the regulating agencies, can be significant as defined in Executive Order 12866. In addition, some of DoD's regulations may impact the regulatory agencies. An example of this is the Base Closure Community Revitalization requiring coordination with the Departments of Housing and Urban Development and Health and Human Services. DoD, as a part of its new program, is not only receiving coordinating actions from the regulating agencies but is coordinating with the agencies that are impacted by its regulations.

The regulatory program for the DoD fully incorporates the provisions of the President's priorities and objectives under Executive Order 12866.

Promulgating and implementing the new regulatory program throughout DoD presents a unique challenge to the management of our regulatory efforts.

**Coordination***Interagency*

DoD has been receiving regulatory plans from those agencies that impact the operation of the Department through the issuance of regulations. A system for coordinating the review process is in place, regulations have been reviewed, and comments have been forwarded to the Office of Management and Budget. The system is working in the Department, and the feedback from the Defense Components is most encouraging. For the first time, they are able to see and comment on regulations from the other agencies before they are required to comply with them. One example of this is the coordination of DoD's regulations on community revitalization with the Department of Housing and Urban Development, the Department of Health and Human Services, the General Services Administration, and the public. The coordination process in DoD is working as outlined in Executive Order 12866.

*Internal*

Through regulatory program points of contact in the Department, we have established a system that provides information from the Vice President and the Administrator of the Office of Information and Regulatory Affairs (OIRA) to the personnel responsible for the development and implementation of DoD regulations. Conversely, the system can provide feedback from DoD regulatory personnel to the Administrator, OIRA. The changes in the internal communications on the regulatory program have been well received within the Department.

**Overall Priorities**

The Department of Defense needs to function at a reasonable cost, while eliminating ineffective and unnecessarily burdensome regulations. The process should respond in a timely manner, be efficient, cost-effective, and both fair and perceived as fair. This is being done at a time when there is significant downsizing in the Department and it will need to react to the contradictory pressures of providing more services with fewer resources.

The Department of Defense, as a matter of overall priority for its regulatory program, adheres to the general principles set forth in Executive Order 12866 as amplified below.

*Problem Identification*

Congress typically passes legislation to authorize or require an agency to issue regulations and often is quite specific about the problem identified for correction. Therefore, DoD does not generally initiate regulations as a part of its mission.

*Conflicting Regulations*

DoD does not plan to issue any significant regulations this year, and the probability of developing conflicting regulations is low. On the other hand, DoD is impacted to a great degree by the regulating agencies. From that perspective, DoD is in a position to advise the regulatory agencies of conflicts that appear to exist, using the coordination processes that have been developed as a part of the new way of doing business in the DoD and Federal agency regulatory programs. It is a priority in the Department to communicate with other agencies and the affected public to identify and proactively pursue regulatory problems that occur as a result of conflicting regulations both within and without the Department.

*Alternatives*

DoD will identify feasible alternatives that will obtain the desired regulatory objectives. Where possible, the Department encourages the use of incentives to include financial, quality of life, and others to achieve the desired regulatory results.

*Risk Assessment*

A priority in DoD is the assessment and minimization of risk. In the regulation on community revitalization, the risk was ameliorated by incorporating the alternatives involving the risk into the regulation. The Department will either recover the cost of the property through outright sale, or in the case of conveyance, recover the cost later in a financial arrangement with the redevelopment authority.

*Cost-Effectiveness*

One of the highest priority objectives of DoD is to obtain the desired regulatory objective by the most cost-effective method available. This may or may not be through the regulatory process. If a regulation is required, DoD will consider incentives for innovation to achieve desired results, consistency in the application of the regulation, predictability of the activity outcome (achieving the expected results), and the costs for regulation development, enforcement, and compliance. These will include costs to the public,

government, and regulated entities, using the best available data or parametric analysis methods, in the cost-benefit analysis and the decisionmaking process.

In the current regulatory actions involving community revitalization, the cost of the regulation to the Government is basically the cost of developing and managing the procedures to dispose of excess real and personal property in the event of a base closure. In return, the Government will receive reimbursement in the event of a direct sale or profit sharing in certain conveyance situations. Cost-effectiveness is being achieved.

#### *Cost-Benefit*

Conducting cost-benefit analyses on regulation alternatives is a priority in the Department of Defense so as to ensure that the potential benefits to society outweigh the costs. Evaluations of these alternatives are done quantitatively or qualitatively or both, depending on the nature of the problem being solved and the type of information and data available on the subject. DoD is committed to considering the most important alternative approaches to the problem being solved and providing the reasoning for selecting the proposed regulatory change over the other alternatives.

#### *Information-Based Decisions*

Lack of information in the rulemaking process has been a serious problem, and it is a priority regulatory issue with the Department of Defense. The new thrust of Executive Order 12866, with open communications among other Federal agencies; State, local, and tribal governments; public interest groups; and the public at large, is a great step towards solving this problem.

In addition, the pressures of time also require agencies to make decisions without as much information as would be ideal. To solve this problem, in part, a priority of the Defense Department is to use the latest information technology to provide access to the latest technical, scientific, and demographic information that is available on the "information highway" in a timely manner, through world-wide communications. Furthermore, the Department intends to use more automation in the Notice and Comment Rulemaking process, which should also reduce time pressures in the rulemaking process.

#### *Performance-Based Regulations*

Where appropriate, DoD plans to develop performance-based standards

that will allow the regulated parties to achieve the regulatory objective in the most cost-effective manner.

#### *Outreach Initiatives*

DoD is taking steps to seek the views of appropriate State, local, and tribal officials and the public in implementing measures to enhance public awareness and participation both in developing and implementing regulatory programs. Last year, in its most recent significant regulation concerning revitalization of the communities, the Department received hundreds of comments from the public and held a public hearing involving focus groups. This reaching out to organizations and individuals who are affected by or involved in the particular regulatory action was a significant regulatory priority of the Department and resulted in a much better regulation.

#### *Coordination*

DoD has embraced the coordination process between and among other Federal agencies in the development of new and revised regulations. For the first time ever, DoD has received regulatory plans from key regulatory agencies and has established a systematic approach to providing the plans to the appropriate policy officials within the Department. Feedback from the DoD Components indicates that the communication among the Federal agencies is a major step toward improving regulations and the regulatory process and improving overall Government operations as well.

#### *Minimize Burden*

In the regulatory process, there are more complaints concerning burden than anything else. In DoD, much of the burden is in the acquisition process. Over the years, acquisition regulations have grown and become burdensome principally because of legislative action. But, in coordination with Congress, the Office of Federal Procurement Policy, and the public, DoD is initiating significant reforms in acquisition so as to effect major reductions in the regulatory burden on personnel in government and the public sectors. To effect these changes, DoD has established the position of Deputy Under Secretary of Defense for Acquisition Reform.

In addition, DoD is presently reviewing its information collections with a view towards cutting the reporting burden on the public in half. This is a direct result of the reduction efforts initiated by the President and strongly supported in DoD.

#### *Simple Design*

Ensuring that regulations are simple and easy to understand is a high regulatory priority in the Department of Defense. All too often the regulations are complicated, difficult to understand, and subject to misinterpretation, all of which can result in the costly process of litigation. The objective in the development of regulations is to write them in clear, concise language that is simple and easy to understand.

In summary, the rulemaking process in DoD should produce a rule that addresses an identifiable problem, implements the law, implements the President's policies, including Executive Order 12866, is in the public interest, is consistent with other rules and policies, is based on the best information available, is rationally justified, is cost-effective, can actually be implemented, is acceptable and enforceable, is easily understood, and stays in effect only as long as is necessary. Moreover, the proposed rule or the elimination of a rule should simply make sense.

#### *Specific Priorities*

For this Regulatory Plan, there are four specific DoD priorities, all of which reflect the regulatory principles established in Executive Order 12866. There are no significant regulatory actions planned, but in those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulation that incorporates not only the provisions of the President's priorities and objectives under Executive Order 12866, but also those of the National Performance Review, dated September 1993.

The DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the four priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning base closures, wetlands, acquisition, and health care delivery.

#### *Base Realignment and Closure (BRAC) Activities*

##### *Revitalizing Base Closure Communities and Community Assistance*

On July 2, 1993, President Clinton announced his five-part plan for the economic revitalization of communities affected by base closures. The plan, "A Program to Revitalize Base Closure Communities," is a high administration

priority that improves the policy of Federal property disposal at closing bases. Provisions of the plan include:

- Jobs-centered property disposal that puts local economic redevelopment first;
- Fast-track environmental cleanup that removes needless delays while protecting human health and the environment;
- Transition coordinators at major bases slated for closure;
- Easy access to transition and redevelopment help for workers and communities; and
- Larger and faster economic development planning grants to base closure communities.

Following the President's announcement, DoD worked with representatives of the National Economic Council and the Congress to develop legislation that would enable DoD to implement the plan. In November 1993, Congress supported the President's plan by enacting the Base Closure Community Assistance Act (subtitle A of title XXIX of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160), referred to here as "title XXIX." This legislation substantially amended the base closure laws and provided the Department of Defense with the tools it needed to carry out the President's plan.

On April 6, 1994, the Department of Defense issued an interim final rule (59 FR 16123). The rule promulgated guidance required by section 2903 of title XXIX and provided interpretive guidance concerning other changes to the base realignment and closure process. Subjects in the regulation included real property screening to aid disposal planning, property conveyances at or below fair market value (referred to as "economic development conveyances"), interim leasing, personal property disposal, and minimum maintenance levels necessary to support civilian reuse. The rule was available for public comment until August 1994, during which time the Department held four outreach seminars (in Washington, DC, Chicago, Dallas, and San Francisco) and a public hearing (in Washington, DC) to explain the interim final rule and foster public comments.

In response to public comments, the Assistant Secretary of Defense for Economic Security convened a working group made up of representatives from the Military Departments and the Office of the Secretary of Defense. The working group was asked to address the public's concerns and develop needed revisions

for the final rule, and to identify and foster DoD-wide approaches to base reuse implementation. As a result of the working group's recommendations, an amendment to the April 1994 interim final rule was issued by the Department of Defense on October 26, 1994, (59 FR 53735). That amendment addressed the requirements for Economic Development Conveyances (EDCs), eliminated certain requirements, including a "market test" to determine marketability of property, and provided more detailed instructions on EDC application and review criteria.

On July 20, 1995, (60 FR 37337), the Department of Defense issued a final rule which covered all of the subject areas in the interim final rule.

Throughout the development of the interim final rule, amendment, and final rule, DoD worked closely with other interested parties to identify problems requiring solutions and to identify performance-based outcomes for each base reuse initiative requiring regulation. DoD worked closely with other Federal agencies and State and local authorities, as well as the Congress. For example, in developing procedures for the screening and disposal of withdrawn public domain lands, the Department worked closely with representatives from the Bureau of Land Management (BLM) to create a process to quickly identify those parcels which will be disposed of in accordance with the base closure law. This joint process will help determine, in a rapid manner, what property may become available for civilian use.

This new regulation calls for increased participation by the public throughout the process of disposing of base closure property. For example, decisions on the disposal of personal property will be made in consultation with the local redevelopment authority (LRA) and every effort will be made to provide personal property to the community to support its "locally-developed" reuse plan. In addition, Federal agencies that desire to acquire property at a closing installation are urged to consult with the LRA to have their needs considered as part of a comprehensive local planning process. Most importantly, a new emphasis has been placed on disposing of property in accordance with the LRA's reuse plan.

DoD, in developing the regulation, is committed to promoting economic recovery and rapid job creation in the communities adversely affected by base closures, while still ensuring that Federal resources are available for other important public uses. To achieve this,

the regulation calls for the balancing of needs—those of the Federal Government and those of base closure communities. For example, DoD specified timetables and requirements that Federal agencies must follow to claim base closure property under the priority accorded to them by the Federal Property and Administrative Services Act of 1949. If these strict requirements are not met, the local community's economic development needs will be considered when determining whether or not to award property to another Federal agency. More importantly, the regulations were designed to improve upon the base closure property reuse process by simplifying the procedures and accelerating property transfers and leases.

In summary, this regulatory initiative, developed after extensive consultation with other Federal agencies and the public, is aimed at assisting base closure communities by providing a mechanism to rapidly redevelop surplus Federal property.

Community Redevelopment and Homeless Assistance (Interim Rule published on August 8, 1995, 60 FR 40277)

In light of the Defense Base Closure and Realignment Commission's 1995 report, the timely issuance of this interim rule was critical. Since this initiative fundamentally changes and improves the way the needs of the homeless are addressed at base closure sites, it was imperative that regulations be issued immediately so communities could be fully informed of the new process prior to final approval of the base closure list. DoD is closing and realigning bases in the United States as a result of decisions made through base closure processes in 1988, 1991, 1993, and 1995. These 4 rounds identified 98 major bases for closure. Integral to this action, and to the President's Five-Part Plan to revitalize base closure communities, is the need to establish policy that ensures expeditious and viable disposition of associated real and personal property, and that speeds the economic recovery of communities where bases identified for closure are located. This interim rule promulgates policy and procedures for implementing the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the Redevelopment Act).

Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 granted first priority on use of all surplus federally owned real and personal property, including former

military installations, to the homeless. The title V provisions have worked reasonably well for small parcels and individual buildings. However, with respect to base closure property, which is large and diverse, the McKinney Act title V provisions did not work well and caused disruption and conflicts at the local level. Consequently, Congress passed the Redevelopment Act, which exempts base closure property from the McKinney Act and creates a new community-based process. Under this new improved process, homeless assistance providers will work directly with Local Redevelopment Authorities on the reuse of former military installations. Minimally, the cost of this regulatory action will result from the establishment and management of procedures which provide for addressing the needs of the homeless in communities affected by the closure of a military base. Benefits, on the other hand, will be substantial and will accrue to the Federal Government and the local communities. The Government will accrue savings from the disposal of unneeded infrastructure and the local communities will receive redevelopment benefits coupled with buildings and services to assist the homeless. In addition, the new process shifts control and responsibility for homeless assistance from Washington and the Federal Government to local communities. It is a win-win situation.

#### *Preserve Quality and Quantity of Wetlands*

During fiscal year 1996, the Army Corps of Engineers is not proposing any significant regulations as defined by Executive Order 12866. The Office of the Assistant Secretary of the Army for Civil Works (OASA(CW)) and the Corps will propose and complete several regulations initiated as part of the President's August 24, 1993, Wetlands Protection Plan and the President's 1995 Regulatory Reinvention Initiative. The wetlands protection plan provides for a fair, flexible, and effective approach to protecting America's wetlands through both regulatory and nonregulatory mechanisms. The regulatory reinvention initiative reinforced those provisions and included additional regulatory reform and streamlining provisions.

During 1995 and 1996 the Corps will propose and finalize four regulations pursuant to its authorities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The first regulation establishes the wetland delineator certification program. This regulation was proposed on March 14, 1995, and will be finalized

by end of 1996. This program provides for training and certification of individuals, as provided for by Section 307(e) of the Water Resources Development Act of 1990, to submit for approval, wetland delineations in accordance with the current Federal wetland delineation manual. Individuals can be certified as meeting certain standards, resulting in an expedited decision by the Corps on their submitted wetland delineation. The goal of the certification program is to improve the quality of consultant-prepared wetland delineations that are submitted to the Corps so that they can be approved more quickly by the Corps.

The second regulation will establish an administrative appeal process whereby permit applicants and landowners can appeal permit denial decisions and jurisdictional determinations. This regulation was proposed on July 19, 1995, and will be finalized in 1996. The administrative appeal process will increase fairness to applicants and landowners in the permitting process by establishing a recourse to Corps permit denial decisions and jurisdictional determinations short of going to court. The process will also provide for third-party involvement if the Corps reconsiders a previous permit denial. The third regulation will increase fairness and efficiency in the wetlands permitting process by establishing deadlines for wetlands permitting decisions under the Clean Water Act. Normally, decisions will be made 90 days from the issuance of a public notice except in certain situations that are beyond the control of the Corps or that involve delays required by other laws. The final regulation will be a consolidation of the Corps rulemaking and guidance, including the above regulations, that have been issued since the last consolidated regulations dated November 13, 1986. The regulations would also be reorganized to make them clearer and easier to use.

#### *Reform Defense Acquisition*

In "Acquisition Reform: A Mandate for Change," the Secretary of Defense highlighted the need for acquisition reform as follows:

The Department of Defense Bottom-up Review provides the vision and the blueprint for meeting the security challenges of the post-Cold War world, responding to threats anywhere in the world where U.S. interests are at risk. In today's environment, the current process will not always be able to meet the Department's need. DoD will not be able to carry out this blueprint without dramatic

changes in its acquisition processes; that is, from determining what the Department needs to logistics support and reutilization requirements.

To meet these new security challenges, the United States must be able to rely heavily on commercial companies for defense needs. It cannot, as it has in the past, rely exclusively on companies that are predominantly defense suppliers. As the Secretary has stated:

...the Department of Defense cannot afford the extra costs associated with keeping its industrial base isolated from the National base. The country needs the benefit that it would otherwise lose as a result of the defense industrial base being kept out of this National base.

Assessing risk, performing cost-benefit analysis, and minimizing burden are cornerstones in the establishment of a cost-effective acquisition process that is consistent with Executive Order 12866.

To make this drastic change, the acquisition process must be fundamentally reengineered, to ensure that the commercial sector is fully utilized to support Government needs, and that all possible streamlining measures are adopted. The Federal Acquisition Streamlining Act of 1994, enacted into law on October 13, 1994, was a major step towards achieving this goal. Specifically, the legislation provided relief in the following major areas: (a) Comprehensive authority to facilitate commercial item acquisition, and (b) simplification and streamlining of most contract actions.

This legislation is the center of regulatory activity in the Department of Defense. DoD is leading the Governmentwide effort to implement the legislation in the Federal Acquisition Regulation (FAR). It is also making necessary changes to the Defense Federal Acquisition Regulation Supplement (DFARS). In addition to actions related to the pending legislation, there is a substantial FAR rewrite effort under consideration as a result of a National Performance Review (NPR) and Core Roles and Mission Commission recommendations. DoD has also chartered 11 process action teams (PATs) to review discrete parts of the acquisition system. Based upon recommendations from these PATs, DoD is in the process of changing its internal acquisition regulations and policies. As the result of the recommendations of our Automated Acquisition Information System PAT, it is in the process of developing a mechanism which would ensure access to individuals within the

Department to all of the regulatory material, as well as other information in our possession, concerning the acquisition system. The Department is committed to acquisition reform and will continue making significant improvements in this area, consistent with the NPR and Executive Order 12866.

*Improve Health Care Delivery in the Defense Department*

DoD operates an extensive system of military medical treatment facilities, in support of two missions: wartime readiness and peacetime benefits. The readiness mission maintains the peacetime health of active duty personnel and makes preparations to attend the sick and wounded in war; the benefits mission provides a health benefit as a condition of service to DoD's eligible beneficiaries, including dependents of active duty personnel and retired military personnel and their dependents and survivors.

The principal health-related regulatory publications of the Department involve CHAMPUS, the Civilian Health and Medical Program of

the Uniformed Services (32 CFR 199). Through CHAMPUS, DoD shares in the cost of civilian care obtained by eligible beneficiaries when services are unavailable in military medical treatment facilities. CHAMPUS regulations address comprehensively issues such as eligibility, benefits, authorized providers, claims payment, appeals procedures, and the like. Changes to the CHAMPUS regulations are coordinated by DoD with the Departments of Transportation (U.S. Coast Guard) and Health and Human Services (Public Health Service), which also have beneficiaries eligible for CHAMPUS.

Amendments to the CHAMPUS regulations generally focus on program changes arising from revisions to the program's statutory base or from DoD initiatives to improve the program. Over the next few years, changes in management of high-cost care and revisions to reimbursement approaches for providers will be among DoD's regulatory priorities.

A major health care initiative of DoD is the TRICARE Program, which is

intended to improve the management and integration of health care delivery in military medical treatment facilities and CHAMPUS, and to increase access to health services, control health care costs, and strengthen quality assurance activities. A major feature of TRICARE will be local health care delivery networks based on arrangements between military and civilian providers and organizations. Beneficiaries will be able to enroll in an HMO-like option to receive all their care from this integrated military-civilian network or obtain care on a case-by-case basis from the network at preferred cost-sharing rates.

The regulatory vehicle for implementation of TRICARE will be an amendment to the CHAMPUS regulation that was published on October 5, 1995. An extensive and ongoing effort to inform the public about TRICARE will enhance the Executive Order 12866 objective of providing full information to the public to encourage substantial and meaningful participation in the regulatory process.

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